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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM GLENN PRICE,

Defendant and Appellant.

C085997

(Super. Ct. No. 15F7786)

Defendant William Glenn Price contends the trial court violated Penal Code section 2900.5<sup>1</sup> and the equal protection clause when it denied his request for presentence custody credit by denying his motion to modify. He argues he should have received credit for time he spent out of custody but subject to the supervised own recognizance (SOR) program and global positioning system (GPS) agreement.

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<sup>1</sup> Further undesignated statutory references are to the Penal Code.

As we explain, defendant has appealed from an untimely motion to modify. Because the trial court lacked jurisdiction to entertain the motion, defendant cannot now appeal from its denial. Consequently, we will dismiss the appeal. (*People v. Mendez* (2012) 209 Cal.App.4th 32, 34; *People v. Turrin* (2009) 176 Cal.App.4th 1200, 1208.)

### **FACTUAL AND PROCEDURAL BACKGROUND**

A detailed recitation of the facts underlying defendant's convictions is unnecessary to address the single sentencing issue on appeal. Suffice it to say that he crashed his girlfriend's car into a tree and thereby caused serious injuries to five young minors. The minors were in the car and were not wearing seatbelts at the time of the crash. Defendant was charged with five counts of child abuse (§ 273a, subd. (a)--counts 1-5), one count of unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)--count 6), and one count of driving without a license (Veh. Code, § 12500, subd. (a)--count 7). The complaint further alleged defendant personally inflicted great bodily injury (GBI) on the children. (§ 12022.7.)

At his arraignment on the morning of December 14, 2015, defendant was remanded into custody and his bail was set at \$100,000. That same afternoon, he was released on SOR with a GPS agreement, pursuant to terms and conditions.

On January 5, 2016, defendant failed to appear in court, resulting in revocation of SOR and issuance of a bench warrant. The next day, defendant contacted SOR staff stating he failed to appear in court due to confusion over the hearing date. The hearing was rescheduled to January 15, 2016, the warrant was recalled, and defendant's SOR status reinstated.

On January 12, 2017, defendant pleaded no contest to count 1 and admitted one GBI enhancement in exchange for dismissal of the balance of charges. His GPS ankle monitor was removed pursuant to the trial court's order while he awaited sentencing. On March 17, defendant failed to appear for sentencing and the court revoked his SOR and issued a bench warrant.

Defendant was arrested on the warrant on April 20 and remained in custody until June 9, 2017, when the trial court sentenced him to an aggregate term of nine years in state prison. The court awarded defendant 58 days of presentence custody credit (51 actual days plus 7 days of conduct credit) for the time he was in custody between his plea and sentencing, from April 20 to June 9, 2017. Defendant's counsel indicated he might request further hearing to argue defendant deserved additional custody credit for time spent on SOR.

On November 1, 2017, defendant moved to modify his sentence to include presentence custody credit for the time he spent on SOR with GPS monitoring. In a subsequent hearing, the trial court denied defendant's motion. Defendant appealed from the denial of his motion to modify.

### **DISCUSSION**

Defendant contends the trial court violated section 2900.5 and his right to equal protection by denying him custody credits for time spent in the SOR/GPS program. He claims he was placed on the SOR/GPS program in lieu of bail and was confined under that program in the same manner and to the same extent as an inmate held in lieu of bail and released on an electronic monitoring program pursuant to section 1203.018.

The People argue defendant was not entitled to additional custody credit because he was not an inmate being held in lieu of bail as required by section 1203.018; rather, he was released on his own recognizance under relatively liberal conditions that were neither as custodial nor as restraining as those imposed on inmates held in lieu of bail and released from jail on home detention with electronic monitoring pursuant to section 1203.018.

The People have the more compelling argument. However, we need not reach the merits, because the trial court lacked jurisdiction to entertain the motion to modify defendant's sentence in any event, as we next explain.

Although defendant cites section 1237.5 in his statement of appealability, his appeal is not from the June 9, 2017, judgment and sentencing. Rather, defendant's notice of appeal, filed November 22, 2017, is well beyond the 60-day time limit on appealing the judgment and instead specifies that defendant is appealing from the November 14, 2017 order (actually issued on November 13, 2017) denying his postjudgment motion to modify his sentence. Any ability to appeal the order would thus stem from section 1237, subd. (b).

An order made after judgment affecting a defendant's substantial rights is appealable. (§ 1237, subd. (b).) However, once judgment is rendered, except for limited statutory exceptions (§§ 1170.126, 1170.18), the sentencing court is without jurisdiction to vacate or modify the sentence except pursuant to the provisions of section 1170, subdivision (d).<sup>2</sup> (See *Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1834-1835.) Section 1170, subdivision (d), allows a sentencing court on its own motion to recall and resentence, subject to the express limitation that the court must act to recall the sentence within 120 days after committing the defendant to prison. (See *Dix v. Superior Court* (1991) 53 Cal.3d 442, 464.) Indeed, "the court loses 'own-motion' jurisdiction if it fails to recall a sentence within 120 days of the original commitment. [Citations.]" (*Ibid.*)

Here, defendant was committed to prison on June 9, 2017. He filed his motion to modify on November 1, 2017. Because defendant's commitment to prison on June 9, 2017 started the 120-day clock under section 1170, subdivision (d), the trial court lacked jurisdiction to hear defendant's postjudgment motion, filed 145 days after his commitment. (See *People v. Chlad* (1992) 6 Cal.App.4th 1719, 1725.) Because the trial court lacked jurisdiction to modify defendant's sentence, denial of his motion could not

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<sup>2</sup> Defendant cited no legal authority in support of his motion to modify his sentence. We see no authority for such a motion beyond section 1170, subdivision (d).

have affected his substantial rights. (*Id.* at p. 1726.) Accordingly, the order denying the motion to modify sentence is not an appealable order, and the appeal must be dismissed. (*Ibid.*)

#### **DISPOSITION**

The appeal is dismissed.

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/s/  
Duarte, J.

We concur:

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/s/  
Butz, Acting P. J.

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/s/  
Hoch, J.